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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No 74-266

STANLEY V. TUCKER,

Petitioner

-v-

DAVID T. WIGGINS, ET AL

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

STANLEY V. TUCKER
Petitioner
Box 35
Hartford, Conn 06101

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1974
No _____

STANLEY V. TUCKER,

Petitioner

-v-

DAVID T. WIGGINS, ET AL

Respondents

PETITION FOR A WRIT OF CETTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitoner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit Dismissing Petitioner's Appeal, Timely Motion To Re-Open Judgment of Dismissal was filed and denied July, 1974

There has been no prior action by This Court in respect to this action.

CITATION TO OPINIONS BELOW

The decisions below are unreported to the best information and belief of Petitioner. The Judgment of Dismissal made January 15th, 1974 is printed in Appendix A1 and the Order Denying the Motion to Re-Open Judgment of Dismissal is printed in the Appendix B1.

JURISDICTION

The jurisdiction of this court is invoked under 28 USC 1254 (1)

QUESTIONS PRESENTED

1. Was Petitioner denied due process of law by notice of motion mailed to the wrong address?

2. Where Petitioner filed $250 cost bond in cash under local rule 7 does this bond meet the requirements of FRAP Rule 7 where Respondents incurred no costs in the district court?

3. If Petitioner was in error on adequacy of his $250 cost bond posted in the district court then was Petitioner entitled to ten days within which to post added bond?

4. Was Respondents Motion To Dismiss Defective in Not showing grounds for increase of Cost Bond?

5. Did Respondents "waive" their right to added cost bond by waiting until after the record and brief were filed in 2nd CA?

CONSTITUTIONAL AND STATUTORY PROVISIONS

This Petition involves the due process and equal protection clauses of the 5th and 14th amendments. At issue is the adequacy of a $250 cash cost bond posted under local Rule 7 USDC-Conn to cover cost on appeal under FRAP RULE 7.

STATMENT OF FACTUAL BACKGROUND

Petitioner filed a civil rights action in the District Court of Connecticut for declaratory and injunctive relief and damages.

Under the Basic Building Code of Conn. Petitioner had erected a small apartment building in Hartford, Conn. complete with its own water supply and fully compying with all ordinances and statutes and on completion was entitled as a matter of law to a certificate of occupancy. All data pertinent to the water supply was delivered to the State Health Department. Defendant David T. Wiggins is an officer of the State Health Department and primarily responsible for many of the wrongs Petitioner complains of.

Without notice or hearing Petitioner was denied his Certificate of Occupancy suffering lost rents and increased construction costs. The water supply was neither approved nor disapproved.

Instead secret conspiratorial letters, instructions and orders were issued by the State Health Department Officers going to City Health Officers and City Building

Inspectors to the effect that without notice or hearing of any type Petitioner was to be denied the Certificate of Occupancy needed.

This Civil Rights Action directly resulted.

STATMENT OF THE CASE

The action was dismissed in the district court for alleged lack of jurisdiction without the respondents incurring any costs. Under Local Rule 7 USDC-Conn Petitioner filed a cash bond for costs of all types for $250.

Timely the Petitioner filed his Notice of Appeal October 30th, 1973. Timely on Nov 27, 1973 Petitioner filed his designation of record and statement of issues. On December 7th, 1973 the Record was filed in the 2nd CA.

Timely the record fee was paid and on Jan8 th 1974 Petitioner filed and served his Brief in the 2nd CA.

On all of the documents filed in the 2nd CA Petitioner included on the cover his correct address as required by FRAP RULE 32.

Meanwhile unknown to Petitioner the counsel for the state defendants, David Della-Bitta, had mailed a motion to dismiss to an obsolete address of Petitioner and without any notice to Petitioner the 2nd CA dismissed the action on January 15th, 1974.

On receipt of a copy of the judgment of dismissal Petitioner timely filed a Motion To Re-Open Judgment. Months passed without action by the Court. On May 6th, 1974 Petitioner filed an Application to Increase Cost Bond

and tendered with the application was an added $250 in cash effectively increasing bond from the $250 formerly on file to the total of $500. This application was never ruled on by the 2nd CA although the moneys were retained and are held to this date.

On July29, 1974 the 2nd CA denied the Motion to Re-Open Judgment of Dismissal

---

SUBSTANTIAL REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE UNITED STATES SUPREME COURT AND THE CIRCUIT COURTS OF APPEAL

Mullane v Central Hanover Trust Co
339 US 306.

> "The right to be heard has little reality or worth unless one is informed that the matter is pending and can chose for himself whether to appear or default, acquiesce or contest."

In this action the motion to dismiss was mailed to the wrong address and this Petitioner had no opportunity to chose whether to defend or default.

Spaidach v Family Finance Corp
395 US at P 343.

> "I think that due process is afforded only by the kinds of "notice" and "hearing" which are aimed at establishing the validity.... of the underlying claim before he can be deprived of his property..."

In this action this Petitioner was denied his valuable appeal rights without any notice of the hearing that took place. Fundamental federally guaranteed rights to due process were ruthlessly violated by the motion to dismiss that was never in fact served upon Petitioner.

Snaidach P 339: "The right to be heard has little meaning unless one is fully informed."

See also Schroder v City of NY, 371 US 208 At P 211:

"We hold that the newpaper publications and posted notices in the circumstances of this case did not measure up to the quality of notice which the Due Process Clase of the 14th Amendment requires."

In this Action Asst Attorney General David Della-Bitta did not even bother to publish his notice of hearing in the Hartford papers (Times or Courant) nor did he post the notice of hearing in the federal courthouse or post office but in fact gave no notice at all to Petitioner.

In Boddie v Conn 401 US 371 The US SUPREME COURT went so far as to hold invalid and unconstitutional a Connecticut state law requirment for payment of court cost prior to filing suit on grounds such a law denied due process to theindigent.

Boddie P 371: "Due Process of law prohibits a state from denying solely because of inability to pay court fees and costs access to the courts."

Compare the generous interpretation of "due process" in Beddie, supra, with the harsh unconsionable treatment of Petitioner by the 2nd CA where after an all purpose cost bond of $250 was posted the action dismissed for alleged "failure to post bond" and after the bond voluntarilly increased to $500 the 2nd CA denied the motion to re-open the judgment of dismissal.

TRULY THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THE US SUPREME COURT.

II. RESPONDENTS WAIVED THEIR RIGHTS TO ADDED COST BOND OR DISMISSAL BY WAITING UNTIL AFTER APPELLANT's BRIEF ON FILE

Prior cases have held that a motion for added cost bond or dismissal must be timely and respondents cannot wait until appellant has expended costs and effort and perfected the appeal and then come in with a "surprise" motion for added cost bond which perhaps appellant cannot meet thus exposing appellant to lost time and money in briefs, record, etc., paid for and all ready to go.

Portland Construction Co 284 F Supp 774 at P 775:

> Defendant by inaction in waiting to serve demand for security for costs on ground of nonresidency of plaintiff and its alleged insolvency until four years after filing of suit and after two weeks of trial was estopped from asserting its rights under Virgin Islands Code providing for security for costs. 5 V.I.C. § 547.

See also 20 Am Jur 2d Sections 42 & 43:

"If security is not furnished by plaintiff the cause does not stand dismissed. ..... Tender of the cost bond before actual dismissal has been held sufficient"

Missouri P R Co v Richmond
11 SW 555

In this action months before the motion to dismiss was filed Petitioner had paid an all purpose $250 cash bond for costs with the Clerk of the District Court.

See also Marder v Food Fair Stores Inc
157 F Supp 553

> "In view of the fact that the plaintiff has already expended much time as well as money and because we feel that the defendants have failed to move seasonably ... the defendants motions (for security for costs) are denied."

Another case holding it injustice to dismiss or require added security late in the game is:

Clair v Philadelphia Storage Batter Co
29 F Supp 299

> "It would be hard lines for a plaintiff who has been led to prepare a case for trial to be non-suited because of a failure to give security"

The above phrase "hard lines" is most appropriate to the action of the 2nd CA in this action in dismissing without notice after security paid and brief filed.

III. THIS COURT UNDER PRIOR RULINGS CAN HOLD CONN USDC LOCAL RULE 7 VAGUE AND UNCONSTITUTIONAL

The language in local Rule 7 of USDC-Conn calling for $250.00 in security for "costs" is without limiting language and any reader such as this Petitioner may reasonably conclude the costs include any costs that may be incurred in the action including "appellate costs".

Rule 7 USDC-Conn: "(a) Costs. At any time after commencement of an action, each defendant is entitled on request to thec clerk to an order to be entered by the clerk, as of course, for a deposit or bond with sufficient surety in the sum of $250.00 to be given within 30 days after entry of such order. Additional or other security or justification of financial responsibility by any surety may be ordered by the court at any time during the pendency of the action for good cause shown on motion duly noticed."

That Petitioner met the requirements of local rule 7 is unquestioned.

Yet without actual notice to Petitioner and in violation of "duly noticed" requirements of local rule 7 the Respondents moved for dismissal or added cost bond. There was no showing of "good cause" in their application only a brazen allegation that no cost bond was posted which of course factually was at variance with the $250 bond posted under local rule 7.

Under factual conditions equivalent to this action in prior case the U S SUPREME

has ruled cost bond requirments as violative of due process because of vagueness and absence of any standards.

Giaccio v Pennsylvania
Jan 19, 1966
382 US 399

3. Constitutional Law ⇐258

Law fails to meet requirements of due process clause if it is so vague and standardless that it leaves public uncertain as to conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case. U.S.C.A.Const. Amend. 14.

Yet under the facts of this case This Court is asked to alternatively reverse and remand on strenght of Giaccio, supra, or grant certiorari to consider the constitutionality of local rule 7 under Giaccio standards.

IV ALLEGED FAILURE TO FILE ADDED COST BOND IN THE COURT OF APPEAL IS NOT GROUNDS FOR DISMISSAL WHERE THE RESPONDENTS SUFFERED NO COSTS IN THE DISTRICT COURT

In the district court the action was dismissed on motion, and the respondents suffered no costs, claimed no costs and were not entitled to award of any costs. Thus the facts fit the classic pattern where prior cases have held that where there is no showing of predjudice to appelles that the lack of cost bonds is not grounds to dismiss.

See Moores Fed Practice Vol 9 S 203. 12

"Failure to file the cost bond is not ground for dismissal of appeal where no specific relief is asked on this score and where there is no showing of disadvantage to the appellees."

St Marie v U.S. 9th CA 1940

108 F 2d 876

Cert denied 311 US 652.

CONCLUSION

This court is requested on the strength of St Marie, supra, or Giaccio, supra to reverse summarilly and remand for further proceedings consistent with due process or in the alternative to note probably jurisdiction.

RESPECTFULLY SUBMITTED:

By_____

PETITIONER

STANLEY V. TUCKER

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

January 15th, 1974

STANLEY V. TUCKER

Plaintiff-Appellant

-v-

DAVID T. WIGGINS, ET AL

Defendant-Appellees

It is hereby ordered that upon consideration of the motion made by counsel for appellees to dismiss the appeal from the USDC-Conn for failure to file a cost bond or in the alternative to direct appellant to file a bond for costs in the minimum amount of $ 250. that the motion to dismiss is granted.

BEFORE : HON LEONARD P MOORE
HON HENRY J. FRIENDLY
HON ROBERT P ANDERSON

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

July 29th, 1974

STANLEY V. TUCKER

Plaintiff-Appellant

-v-

DAVIT T. WIGGINS, ET AL

Defendant-Appellees

The Motion To Re-Open Judgment of Dismissal Is hereby Denied.

BEFORE: HON LEONARD P MOORE

HON ROBERT P ANDERSON

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CONN)
County of Hartford) ss

I, STANLEY V. TUCKER, do hereby state that on the 6th day of Sept 1974 I served three copies of the within Petition For Certiorari on the Apppellees by mailing postage prepaid first class mail by depositing postage prepaid in the US mails at Hartford, Conn addressed as follows:

Richard Cosgrove Esq
550 Main St
Hartfofd, Conn 06103

David Della-Bitta Esq
30 Trinity St
Hartford, Conn 06115

Edward Cowles
686 Park St
Hartford, Conn 06103

David T Wiggins
79 Elm St
Hartford, Conn 06115

James P Herlihy
550 Main St
Hartford, Conn 06103

Richard Woodhall
79 Elm St
Hartford, Conn 06115

James P Gory
550 Main Street
Hartford, Conn 06101

Dated Sept 6th 1974

By Stanley V. Tucker
STANLEY V. TUCKER

Sworn and subscribed to before me this 6th of Sept 1974

By Robert M Langrano NOTARY PUBLIC

My Commission Expires Mar. 31, 1979

My commission expires _____

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OCTOBER TERM, 1974

(74-266)

STANLEY V. TUCKER
Petitioner

vs.

DAVID T. WIGGINS, ET AL.

Respondents

ON PETITION FOR
WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT
BRIEF FOR RESPONDENTS IN OPPOSITION

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D. Rule 7, Local Rules of Procedure, United States District Court, District of Connecticut. 2a

Citations: .....

1. Cases:

a. *Central Manufacturing Co. v. B.M.K. Corporation*, 160 Fed. Supp. 318. 9

b. *Hagan v. Whitman* (CCA 9th, 1966) 356 F.2d 742 10

c. *MacNeil Bros. v. Forte* (CCA 1st, 1958) 253 F.2d 500. 10

d. *St. Marie v. U.S.* (CCA 9th, 1940) 108 F. 2d 876, Cert. denied 311 U.S. 652. 11

2. Miscellaneous:

a. Rule 2(c) Local Rules of Procedure for United States District Court, District of Connecticut. 12a

b. Rule 7, Local Rules of Procedure for United States District Court, District of Connecticut. 9

c. Rule 7, Federal Rules of Appellate Procedure. 9

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v.

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Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Prior Action

There has been no prior action by the Court in this matter.

Opinions Below

The decision delivered in the Court below is not as yet officially reported, but is appended to the Petition for a Writ of Certiorari. The Motion to Dismiss of the Respondents was granted on January 15, 1974, the Motion to Re-Open the Judgment of Dismissal was denied on July 29, 1974.

Jurisdiction

The Respondents do not question the jurisdiction as set forth in the petition.

QUESTIONS PRESENTED

Petitioner's Brief mistakes the nature of the questions to be reviewed. The issues are

1. Was notice mailed to the petitioner at the address on file with the Clerk of the District Court, which address had not been changed by the Petitioner, proper notice?

2. Where the Petitioner was required by order of the District Court to file a $250 cost bond for each Respondent, but thereafter Petitioner filed only a single $250 cost bond and filed no appeal bond, had the Petitioner complied with the requirements of Rule 7 of the Federal Rules of Appellate Procedure?

3. Where Petitioner filed no appeal bond, was Petitioner entitled to file a purported increase in bond after judgment of dismissal was entered by the Circuit Court?

4. Was Respondents' Motion to Dismiss properly granted when it alleged Petitioner failed to file bond for costs as required by Rule 7 of the Federal Rules of Appellate Procedure?

5. Did Respondents "waive" their right to file a motion for dismissal of the Petitioner's Appeal where such motion was filed one week after the receipt of the record which showed no appeal bond to have been filed and before the Petitioner mailed his Brief on January 8, 1974?

STATEMENT

The Petitioner has made a "Statement of Factual Background" a part of his petition for certiorari. This statement contains nothing which has ever been introduced in evidence before a court and its contents have no bearing on the questions presented in the petition for certiorari.

The facts as shown by the record are as follows:

1. The Petitioner's action was dismissed in the District Court for failure to state a claim upon which relief can be granted with costs to the defendants on October 16, 1973.

2. Prior to the dismissal and upon separate application by each of the Respondents, David T. Wiggins, Individually, David T. Wiggins, in his capacity as Director of State Department of Health for the State of Connecticut, Richard Woodhall, individually, Richard Woodhall, in his capacity as Assistant to the Director of the State Health Department, James P. Herlihy, individually, James P. Herlihy, as Senior Public Health Sanitarian for the City of Hartford, James P. Gorry, individually, James P. Gorry, as Chief Plumbing Inspector for the City of Hartford, Edward Cowles, individually, and Edward Cowles, as Housing Inspector for the City of Hartford, the Petitioner was ordered to file a $250.00 bond as security for costs.

3. Instead of ten $250.00 bonds as required by the foregoing orders, the Petitioner filed one $250.00 bond with the Clerk of the District Court for the District of Connecticut.

4. The address of the Petitioner on file with the Clerk of the District Court was 963 Capitol Avenue, Hartford, Connecticut.

5. No change of address was ever filed with the Clerk of the District Court.

6. On October 30, 1973, the Petitioner filed a Notice of Appeal to the Second Circuit Court of Appeals dated October 27, 1973.

7. On November 27, 1973, the Petitioner filed a Designation of Record and Statement of Issues.

8. On December 7, 1973, the Record On Appeal and Index To Record On Appeal was forwarded to A. Daniel Fusari, Esq., Clerk, United States Court of Appeals for the Second Circuit.

9. On said Record On Appeal, Stanley V. Tucker, pro se, 963 Capitol Avenue, Hartford, Connecticut, 06106, was shown as Attorney for the Plaintiff.

10. No appeal bond was shown on the Record On Appeal.

11. On December 14, 1973, the Respondents filed a Motion to Dismiss on the grounds that the appellant failed to file a bond for costs as required by Rule 7, Federal Rules of Appellate Procedure and a copy of this Motion was mailed postage prepaid to Stanley V. Tucker, 963 Capitol Avenue, Hartford, Connecticut, 06106.

12. On January 15, 1974, the Respondents' Motion to Dismiss was granted by the United States Court of Appeals for the Second Circuit.

13. On January 25, 1974, the Petitioner filed a Motion to Re-Open Judgment of Dismissal in the United States Court of Appeals for the Second Circuit.

14. On May 6, 1974, the Petitioner filed with the United States Court of Appeals for the Second Circuit, an "Application for Appellant's Voluntary Increase of Cost Bond On Appeal To Five Hundred Dollars and To Vacate The Order of Dismissal."

15. On July 29, 1974, the United States Court of Appeals for the Second Circuit denied the Petitioner's motion for Reinstatement of the Appeal.

ARGUMENT

I. A costs bond filed in the District Court does not meet the requirements of an appeal bond required under Rule 7 of the Federal Rules of Appellate Procedure.

On June 23, 1973, the Petitioner filed a cost bond with the Clerk of the United States District Court for the District of Connecticut. The Petitioner had been ordered to post a $250.00 bond for each defendant or bonds totaling $2,500.00. This the Petitioner did not do. Under Local Rule 7, each defendant is entitled to request a bond for costs in the amount of $250.00 and this bond has no bearing on a subsequent bond in the amount of $250.00 required under the provisions of Rule 7 of the Federal Rules of Appellate Procedure. The defendants would be within their rights in seeking execution against the bond filed by the Petitioner for costs in the District Court.

> "The costs of the trial court, upon judgment rendered, follow that judgment or are merged in it. In the absence of a supersedeas bond (under 73 (d)), the prevailing party below may issue execution against the defendant on his judgment and collect both judgment and costs. Even though the judgment be six cents and the costs substantial, they both may be collected by execution. Indeed, I assume if the judgment be merely for costs, such costs may be collected by execution."
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> *Central Manufacturing Co. v. B.M.K.Corporation*, 160 Fed. Supp. 318, 321.

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>
> *Central Manufacturing Co. v. B.M.K.Corporation*, 160 Fed. Supp. 318, 321.

Under the provisions of Rule 7 (F.R.A.P.) only the costs of appeal are subject to the appeal bond, not district court costs, unless a supersedeas bond was filed. Rule 7 (F.R.A.P.) specifically sets out what the appeal bond shall contain. The cash bond filed by the Petitioner contained none of these requirements.

II. Notice mailed to Petitioner's address on file with the Clerk of the District Court constitutes good notice of Motion to Dismiss.

The Petitioner claims that he received no notice of the Respondent's Motion for Dismissal, although it was mailed to his address on file with the Clerk of the District Court. It should be pointed out that the Brief that Petitioner relies on to show that his address was different than that on file with the District Court Clerk, was filed in January, 1974, after the Motion to Dismiss was filed and he has offered nothing to show that he requested his mailing address to be changed. Local Rule 2 (c).

III. The Circuit Court may dismiss an appeal for failure to file an appeal bond.

The dismissal of an appeal where a bond or appeal has not been filed is a matter of discretion with the Court. See *Hagan v. Whitman*, 356 F.2d 742 (1966) CCA(9), *MacNeil Bros. v. Forte*, (CCA 1st, 1958) 253 F2d 500.

The Court of Appeals for the Second Circuit not only reviewed this matter on the original motion to dismiss, but reviewed it a second time on the Petitioners motion to reopen the judgment of dismissal.

In conclusion, it might be pointed out that in the case of *St. Marie v. U.S.* (9th CA) 1940, 108 F2d 876, Cert. denied 311 U.S. 652, the Court did not state that failure to file a cost bond is not ground for dismissal of appeal where no specific relief is asked on this score and where there is no showing of disadvantage to the appellees. On the contrary, the court in its opening specifically stated it was not considering this question because it had not been raised.

The Petitioner failed to follow the rules in both the District Court and the Circuit Court of Appeals. He has been denied none of his rights.

CONCLUSION

For the reasons stated above, Respondents say that a Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Respondents

David J. Della-Bitta, Esq.
Assistant Attorney-General
Counsel for Respondents,
David T. Wiggins and
Richard Woodhall.

Richard M. Cosgrove, Esq.
Deputy Corporation Counsel
Counsel for Respondents
James P. Herlihy, Edward
Cowles and James P. Gorry.

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STANLEY V. TUCKER
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ON PETITION FOR
WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT
APPENDIX FOR RESPONDENTS
IN OPPOSITION

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
OFFICE OF THE CLERK
FEDERAL BUILDING
NEW HAVEN 06508

SYLVESTER A. MARKOWSKI
CLERK

FRANCES J. CONSOLO
DEPUTY-IN-CHARGE
NEW HAVEN

December 7, 1973

A. Daniel Fusaro, Esq.
Clerk, United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, New York

RE: Stanley V. Tucker vs. David T. Wiggins, et als
CIVIL NO. 15,574

Dear Mr. Fusaro:

Enclosed is the Record on Appeal in the above-entitled case, along with two copies of the Index for receipting purposes.

Very truly yours,

SYLVESTER A. MARKOWSKI
CLERK

BY_____
Deputy in Charge

W/C/m
Encls.
cc: Mr. Stanley V. Tucker,
Robert K. Killian, Esq.
F. Michael Ahern, Esq.
David J. Della-Bitta, Esq.
Richard M. Cosgrove, Esq.
Mr. David C. Wiggins
Mr. Richard S. Woodhull
Mr. Edward Cowles
Mr. James P. Harlihy
Mr. James J. Gorry

CIVIL DOCKET
UNITED STATES DISTRICT COURT

15574

M. Joseph Blumenfeld

Jury demand date: Jan. 26, 1973 by Plaintiff

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
STANLEY V. TUCKER vs. DAVID T. SHOCKEN, Individually and in his capacity as Director State Health Department for the State of Connecticut; RICHARD WOODHALL, Individually and in his capacity as Assistant to the Director of the State Health Department for the State of Conn.; JAMES F. HARTIGAN, Individually and in his capacity as Senior Public Health Sanitarian for the City of Hartford; EDWARD COWLES, Individually and in his capacity as Housing Inspector for the City of Hartford; JAMES P. GERRY, Individually and in his capacity as Chief Plumbing Inspector for the City of Hartford DEFENDANTS: (Cont'd) Richard S. Woodhall, Pro se - Individual Assistant Director State Health Dept. 79 Elm Street Hartford, Conn. Edward Cowles, Pro se - Individual James P. Hartigan, Pro Se - Individual James J. Gerry, Pro se - Individual	For plaintiff: Stanley V. Tucker, pro se 651 Central Avenue Hartford, Conn. 06106 For defendant: Robert K. Killian (For: David T. F. Michael Ahern Wiggins & Richard David J. Della-Ricca Woodhall) 90 Trinity Street Hartford, Conn. 06115 Richard M. Cosgrove (For: Hartigan Cowles & Gerry) Deputy Corporation Counsel 550 Main Street Hartford, Conn. 06103 David C. Wiggins, pro se - Individual Director, State Health Dept. 79 Elm Street Hartford Conn.

STATISTICAL RECORD	COSTS			DATE 1973	PROCEEDINGS	REC.		CODE	
JS 6 mailed	Clerk			1/29	Stanley V. Tucker	15	00		
JS 6 mailed	Marshal			1/31	Deposit: C.F.100369			15	00
Basis of Action: Declaratory Judgment action brought pursuant to 42 USC §§ 1983 and 1985(3), seeking	Docket fee			10/30	Stanley Tucker (Appeal)	5	00		
	Witness fees			10/31	Deposit: C.F.100869			5	00
Action arose when: deprivation of alleged violation of Constitutional rights by defendants in enforcing various State Statutes concerning property owned by Plaintiff. $225,000.	Depositions								

All of the 3-Judge District Court

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
OFFICE OF THE CLERK
FEDERAL BUILDING
NEW HAVEN 06505

SYLVESTER A. MARKOWSKI
CLERK

FRANCES J. CONNOLLY
DEPUTY-IN-CHARGE
NEW HAVEN

December 7, 1973

A. Daniel Fusaro, Esq.
Clerk, United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, New York

RE: Stanley V. Tucker vs. David T. Wiggins, et als
CIVIL NO. 15,574

Dear Mr. Fusaro:

Enclosed is the Record on Appeal in the above-entitled case, along with two copies of the Index for receipting purposes.

Very truly yours,

SYLVESTER A. MARKOWSKI
CLERK

BY_____
Deputy in Charge

M/C/m
Enclos.
cc: Mr. Stanley V. Tucker,
Robert K. Killian, Esq.
F. Michael Ahern, Esq.
David J. Della-Bitta, Esq.
Richard M. Cosgrove, Esq.
Mr. David C. Wiggins
Mr. Richard S. Woodhull
Mr. Edward Cowles
Mr. James P. Herlihy
Mr. James J. Gorry

CIVIL DOCKET
UNITED STATES DISTRICT COURT

15574

M. Joseph Blumenfeld

Jury demand date: Jan. 26, 1973 by Plaintiff

TITLE OF CASE	ATTORNEYS
STANLEY V. TUCKER vs. DAVID T. WIGGINS, Individually and in his capacity as Director State Health Department for the State of Connecticut; RICHARD WOODHALL, Individually and in his capacity as Assistant to the Director of the State Health Department for the State of Conn.; JAMES P. HARLIBY, Individually and in his capacity as Senior Public Health Sanitarian for the City of Hartford; EDWARD COWLES, Individually and in his capacity as Housing Inspector for the City of Hartford; JAMES P. [illegible], Individually and in his capacity as Water Plumbing Inspector for the City of Hartford (ON DEFENDANTS: (Cont'd) Richard S. Woodhall, Pro se - Individual Assistant Director State Health Dept. 79 Elm Street Hartford, Conn. Edward Cowles, Pro se - Individual James P. Harliby, Pro Se - Individual James J. Gorry, Pro se - Individual	For plaintiff: Stanley V. Tucker, pro se 953 Capitol Avenue Hartford, Conn. 06106 For defendant: Robert K. Killian (For: David T. F. Michael Ahern Wiggins & Richard David J. Della-Rizza Woodhall) 50 Trinity Street Hartford, Conn. 06115 Richard M. Cosgrove (For: Harliby, Deputy Corporation Counsel Cowles & Gorry) 550 Main Street Hartford, Conn. 06103 David C. Wiggins, pro se - Individual Director, State Health Dept. 79 Elm Street Hartford Conn.

STATISTICAL RECORD	COSTS			DATE 1973	NAME OR RECEIPT NO.	REC.		DISB.	
JS. 6 mailed	Clerk			1/29	Stanley V. Tucker	15	00		
JS. 6 mailed	Marshal			1/31	Deposit: C.F.100869			15	00
Basis of Action: Declaratory judgment action brought pursuant to 42 USC §§ 1983 and 1985(3), seeking	Docket fee			10/10	Stanley Tucker (Appeal)	5	00		
	Witness fees			10/31	Deposit: C.F.100869			5	00
Action arose at: deps.as for alleged violation of Constitutional rights by defendants in enforcing various State Statutes concerning property owned by Plaintiff. $225,000. Also 28 U.S.C. 3-Judge District Court	Deposition								

DATE	PROCEEDINGS	Date Order or Judgment Note
1973		
1/26	Complaint, Jury Trial Demand and Petition for Three Judge Court, filed at Hartford. Summons issued and together with copies of same and of complaint, jury demand and Petition, handed to the Marshal at Hartford for service.	
2/13	Marshal's Return Showing Service, filed.-Summons & Complaint.	
"	Brief in Support of Application for Three-Judge Court, filed by plaintiff at Hartford.	
2/13	Application to Convene a Three-Judge District Court "Over to Feb. 20th". Blumenfeld, J. M-2/14/73	
2/21	Appearance of Robert K. Killian, Atty. General and F. Michael Ahern and David T. Della-Bitta, Asst. Attys. Generals entered for defendants David T. Wiggins, Director of State Health Dept. and Richard Woodhall, Asst. to Director in their official capacities.	
2/23	Appearance of Richard M. Cosgrove, Deputy Corporation Counsel, entered for defendants James P. Herlihy, Edward Cowles and James P. Cory.	
2/26	Plaintiff's Application to Convene a Three-Judge District Court "over two weeks". Blumenfeld, J. M-2/27/73	
"	Stipulation for Enlargement of Time, filed and granted. Blumenfeld, J. M-2/27/73 Time for defendants to file responsive pleading extended until March 21, 1973. Copies mailed to all counsel.	
3/12	Plaintiff's Application to Convene a Three-Judge District Court "Off". (Asst. Atty Gen. David J. Della-Bitta appeared and stated parties had agreed to enlargement of time). Blumenfeld, J. M-3/14/73	
3/22	Motion to Dismiss and Notice of Motion, filed at Hartford and given to Judge Blumenfeld.	
3/26	Hearing on Application to Convene a Three-Judge District Court. Decision Reserved. One week for defendant to file brief and one week for plaintiff to respond. Blumenfeld, J. M-3/27/73	
4/4	Motion for More Specific Statement, Notice of Hearing and Memorandum of Law, filed by Plaintiff.	
4/2	Amended Motion to Dismiss, filed by defendants at Hartford. ( )	
"	Brief in Opposition to Application for Three-Judge Court filed by defendants at Hartford.	
4/9	Plaintiff's Motion for More Specific Statement "Off". Blumenfeld, J. M-4/10/73	
"	Application (Ex Parte) with Notice to Defendants for Enlargement of Time to Respond to Defendant's Brief in Opposition to Application for Three Judge Court, filed by Plaintiff.	
"	Motion to Sever, Notice of Motion and Supporting Brief, filed by Plaintiff.	
4/10	Plaintiff's Motion for More Specific Statement, endorsed as follows: "Off - defendant's brief sets out the grounds of dissent." Blumenfeld, J. M-4/12/73. Copies mailed to all counsel and to plaintiff.	
4/10	Letter dated April 9, 1973 from plaintiff to Judge Blumenfeld, re Brief in Support of Motion to Dismiss and Application for Three Judge Court, filed.	
4/28	Request for Entry of Default against defendants David T. Wiggins, Individually, James P. Herlihy, Individually, Edward Cowles, Individually and James P. Cory, Individually for failure to appear or plead, filed by Plaintiff pro se.	

(Cont'd.)

STANLEY V. TUCKER v. DAVID T. WIGGINS, Ind. and as Director State Health Department, et als

DATE 1973	PROCEEDINGS	Date Order or Judgment Noted
4/16	Default entered under Rule 55(a) as to defendants David T. Wiggins, James P. Herlihy, Edward Cowles and James P. Corry, all individually only. Markowski, C. M-4/16/73 Copies to Plaintiff and counsel.	
4/18	Appearance of Robert K. Killian, Atty. General, F. Michael Ahern and David J. Della-Bitta, Asst. Attys. General entered for defendants David T. Wiggins and Richard Woodhall.	
"	Appearance of Richard M. Cosgrove, Deputy Corporation Counsel entered for defendants James P. Herlihy, Edward Cowles and James P. Corry.	
"	Motion to Set Aside Default and Notice of Motion, filed by defendants David T. Wiggins and Richard Woodhall.	
4/30	Hearing on (1) Plaintiff's Motion to Sever; (2) Defendants' Motion to Set Aside Default. Decision Reserved on Both Motions. Blumenfeld, J. M-5/2/73.	
5/4	Order endorsed on Plaintiff's Motion to Sever, as follows: "In view of the pendency of the plaintiff;s motion to convene a three-judge district court, action on this motion to sever will be deferred until after disposition of that motion." Blumenfeld, J. M-5/7/73 Copies mailed from Hartford to Plaintiff, Asst. Atty Gen Della-Bitta and to Corp. Counsel Cosgrove.	
"	Order endorsed on Defendants' Motion to Set Aside Default, as follows: "No prejudice having inured to the plaintiff, the defendants' motion to set aside the default is granted for good cause shown." Blumenfeld, J. M-5/7/73 Copies mailed from Hartford to Plaintiff, Asst. Atty Gen. and to Corp. Counsel.	
5/15	Motion of Attorney General and Asst. Attorney General to Withdraw Appearance for defendants David T. Wiggins and Richard Woodhall in their individual capacities only, and Notice of Motion, filed.	
5/15	Appearance of David C. Wiggin entered pro se with respect to his individual capacity.	
"	Appearance of Richard S. Woodhull, entered pro se with respect to his individual capacity.	
5/17	Motion of Richard M. Cosgrove, Deputy Corporation Counsel, for Permission to Withdraw Appearance for Defendants James P. Herlihy, Edward Cowles, and James P. Corry, in their individual capacities only, and Notice of Motion, filed.	
5/17	Appearances (3) of James P. Herlihy, Edward Cowles and James J. Corry entered pro se with respect to their individual capacity.	
5/29	Hearing on (1) Motion of Atty. General Killian and Asst. Atty. General Ahern to Withdraw Appearance for Defendants David T. Wiggin and Richard Woodhall in their individual capacities only; (2) Motion of Richard M. Cosgrove to Withdraw His Appearance for Defendants Herlihy, Cowles and Corry, in their official capacities only. "Granted" Blumenfeld, J. Copies mailed to all counsel.	
5/14	[illegible] Motion to Dismiss and in opposition to application for Three-Judge Court, filed by defendants David C. Wiggin and Richard S. Woodhull.	
"	Motion to Dismiss as to Pro Se Defendants, filed by David C. Wiggin and Richard S. Woodhull, individually.	
"	Request to Clerk for Security for Costs pursuant to Local Rule 7, filed by defendant [illegible] Woodhull, individually.	
"	Request to Clerk for Security for Costs pursuant to Local	

DATE 1973	PROCEEDINGS	Date Order or Judgment Noted
	Rule 7, filed by defendant David T. Wiggins, individually.	
6/14	Request that Plaintiff deposit cash bonds or bond with sufficient surety in the sum of $250.00 as security for costs, filed by Defendants David T. Wiggins, in his capacity as Director of the State Health Department for the State of Conn.; and Richard Woodhall, in his capacity as Assistant to the Director of the State Health Department for the State of Connecticut.	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/14/73. Copies mailed. (David T. Wiggins, in his capacity as Director of State Health Dept. for the State of Conn.)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/14/73. Copies mailed. (Richard Woodhall, in his capacity as Assistant to the Director of the State Health Dept.)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/14/73. Copies mailed. (Richard S. Woodhall, individually Richard Woodhall, individually)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/14/73. Copies mailed. (David C. Wiggin, individually David T. Wiggins, individually)	
6/15	Request that Plaintiff deposit cash bonds or bonds with sufficient surety in the sum of $250.00 as security for costs, filed by defendants James P. Corry, in his capacity as Senior public health sanitarian for the City of Hartford; Edward Coules in his capacity as Housing Inspector for the City of Hartford; and James J. Curry in his capacity as Chief Plumbing Inspector for the City of Hartford.	
"	Request that Plaintiff deposit cash bond or bond with sufficient surety in the sum of $250.00 as security for costs, filed by defendant Edward Coules, individually.	
"	Request that Plaintiff deposit cash bond or bond with sufficient surety in the sum of $250.00 as security for costs, filed by defendant James J. Curry, individually.	
"	Request that plaintiff deposit cash bond or bond with sufficient surety in the sum of $250.00 as security for costs, filed by [illegible]	
6/18	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/18/73. Copies mailed. (Edward Coles, individually)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/18/73. Copies mailed. (Edward Coles, as Housing Inspector for the City of Hartford)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6 18/73. Copies mailed. (James J. Corry, individually)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/18/73. Copies mailed. (James P. Cory , as Chief Plumbing Inspector for the City of Hartford)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C.	

(continued)

D. C. 110 Rev. Civil Docket Continuation STANLEY V. TUCKER v. DAVID T. WIGGINS, Ind. and as Dir. etc.

1973	PROCEEDINGS State Health Department et al	Date Order or Judgment Noted
	M-6/18/73. Copies mailed. (James P. Herlihy, individually)	
6/18	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/18/73. Copies mailed. (James P. Herlihy, as Senior Public Health Sanitarian for the City of Hartford)	
6/26	Cash bond in the amount of $250.00 deposited into the Registry of the Court. (filed by Plaintiff)	
6/25	Plaintiff's Brief in Opposition to Motions to Dismiss on File and Plaintiff's Supplemental Brief in Support of Application for Three-Judge Court, filed at Hartford.	
6/27	Pro-Se Defendants' (David T. Wiggins and Richard Woodhall) Motion to Dismiss as to Pro-Se Defendants, endorsed as follows: "Off." Blumenfeld, J. M-6/27/73. Copies mailed.	
7/16	Motion for Extension of Time for Filing of pleadings until September 15, 1973 and Notice of Motion, filed by defendant.	
9/10	Hearing on (1) Application for Three Judge Court; and (2) Defendants' Motion to Dismiss. Decision Reserved. Blumenfeld, J. M-9/13/73	
10/12	Ruling on Motion to Dismiss, entered. The motion to dismiss the complaint for failure to state a claim upon which relief can be granted (Rule 12(b)(6), F.R.C.P., is granted.(*) The entire complaint is hereby ordered dismissed. Blumenfeld, J. M-10:15/73 copies mailed. (*Plaintiff's application for a three-judge court denied and that portion of his complaint is dismissed)	
10/16	Judgment entered that this action is dismissed for failure to state a claim upon which relief can be granted, with costs to the defendants. Markowski, C. M-10/16/73 Copies mailed.	
10/30	Notice of Appeal, filed by Plaintiff. Copies mailed.	
11/27	Designation of record and Statement of Issues, filed by plaintiff.	

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	
VS.	:	
	:	CIVIL NO. 15,574
DAVID T. WIGGINS, ET ALS	:	

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APPENDIX B

Rule 7.

BOND FOR COSTS ON APPEAL IN CIVIL CASES

Unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking which includes security for the payment of costs on appeal, in civil cases a bond for costs on appeal or equivalent security shall be filed by the appellant in the district court with the notice of appeal; but security shall not be required of an appellant who is not subject to costs. The bond or equivalent security shall be in the sum or value of $250 unless the district court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the court of appeals may direct if the judgment is modified. If a bond or equivalent security in the sum or value of $250 is given, no approval thereof is necessary. After a bond for costs on appeal is filed, an appellee may raise for determination by the clerk of the district court objections to the form of the bond or to the sufficiency of the surety. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

APPENDIX C

Rule 2

(c) *Local Office.* No member of the bar of this court who does not have an office for the transaction of business in person within the District of Connecticut and no visiting lawyer admitted specially under Rule 2(e) not having an office for the transaction of business in person within the District of Connecticut shall appear as attorney or proctor of record in any cause without specifying on the record a member of the bar of this court having an office within the District of Connecticut, upon whom service of all papers shall be made.

Any party appearing *pro se* must (1) give the address within the District of Connecticut where service can be made in the same manner as service is made on an attorney or (2) designate in writing the clerk of the court to receive service and give the clerk an address where service can be forwarded.

APPENDIX D

Rule 7

SECURITY FOR COSTS; BOND ON REMOVAL

(a) *Costs.* At any time after the commencement of an action, each defendant is entitled on request to the clerk to an order to be entered by the clerk, as of course, for a deposit or bond with sufficient surety in the sum of $250.00 to be given within thirty days from the entry of such order. Additional or other security or justification of financial responsibility by any surety may be ordered by the court at any time during the pendency of the action for good cause shown on motion duly noticed.

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Supreme Court, U. S.
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NOV 21 1974
MICHAEL RODAK, JR., CLE

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No 74-266

STANLEY V. TUCKER,

Petitioner

-v-

DAVID T. WIGGINS, ET AL

Respondents.

PETITIONER'S REPLY BRIEF TO OPPOSITION BY THE APPELLEES

STANLEY V. TUCKER
Petitioner
Box 35
Hartford, Conn 06101

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974
No 74-266

STANLEY V. TUCKER,

Petitioner

-v-

DAVID T. WIGGINS, ET AL

Respondents

PETITIONER'S REPLY BRIEF TO OPPOSITION BY APPELLEES TO PETITION FOR CERTIORARI

Pursuant to Rule 24 (4) of the Rules for The Supreme Court the Petitioner replies to the Opposition by Appellees

---

Introduction : The brief filed by the Appellees is highly misleading in all points raised and lacking in authorities in form of case law in the support thereof.

SUBJECT INDEX

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ARGUMENT

I. CASES CITED BY APPELLEES ARE MISQUOTED AND DO NOT SUPPORT THEIR ARGUMENT

Under Point I appellees contend that a bond filed in the district court of Connecticut does not meet the cost bond requirements on appeal. Yet there are no known cases construing this exact point. Indeed the broad and simple language of Local Rule 7 of the District Court of Connecticut (see Page 9 of the Petition For Certiorari) leads to no other conclusion but that the cost bond is applicable to all costs including appellate.

All known cases construing district court cost bonds are based on the CONDITION or NECESSITY for Appellees to move the court on motion with notice for any added or increased costs. This same requirement exists in Local Rule 7 and was disregarded by the Appellees:

Local Rule 7: "....Added security... may be ordered by the court.... for good cause..... on motion duly noted"

In this action in the district court this Petitioner contends that the Appellees violated Local Rule 7 by:

1. fallure to move for added costs
2. failure to show "good cause"
3. failure to properly "notice" the motion by a failure to mail the motion to correct appellate address

I A. APPELLEES ERRONIOUSLY CONTEND THAT CENTRAL MFG CO V B.M.K. CORP 160 F SUPP 318 STANDS FOR THEIR FIRST POINT THAT COST BOND DID NOT COVER APPELLATE COSTS

Central Mfg Co, supra, a 1958 case stands for the opposite argument; namely that a cost bond filed in the appellate court did not cover costs in the district court

This argument apparently valid in 1958 has not the slightest application to this action.

The rule applicable in 1958 namely FRCP Rule 73 c has limiting language that was displaced by the FEDERAL RULES OF APPELLATE PROCEDURE, Rule 7, in 1968 which contains substantial introductory language to the effect that prior undertakings should suffice unless ordered otherwise by the court.

FRAP RULE 7 :"Unless an appellant... has filed .... other undertaking...."

This clear and explicit language is read to mean that the other undertaking filed by Petitioner in this action under Local Rule 7 is adequate and exempts Petitioner from further cout bond requirements in the court of appeal unless required by order of the court.

I B . APPELLEES ERRONIOUSLY CONTEND THAT MAILING OF NOTICE TO THE ADDRESS IN DISTRICT COURT MET DUE PROCESS OF THE APPELLATE COURT

Contrary to the argument Point II of Appellee's Brief the FRAP contain a very specific requirment.

FRAP RULE 32 (a): "The front cover of briefs and appendices shall contain:

(5) the names and address of counsel representing the party"

The application of FRAP Rule 32 a and not the District Court local rules governs due process in the appellate courts. Mailing to any other address as was done by the Appellees is unjust and unjustified and a DENIAL OF NOTICE and a DENIAL OF DUE PROCESS.

The distirct court has no jurisdiction while the case is on appeal and any forms filed remain there gathering dust until the case comes down on Order of Remand. The FEDERAL RULES OF APPELLATE PROCEDURE make this crystal clear.

FRAP RULE 1 (a): "These rules govern Procedure in appeals to the United States Courts of Appeal....."

I C. APPELLEES ARE WRONG IN POINT III AS COURTS OF APPEAL UNIFORMLY HOLD AN APPEAL MAY BE DISMISSED FOR FAILURE TO COMPLY WITH A COURT ORDER TO POST A COST BOND

The cases cited by Appellees do not hold nor has this Petitioner found any cases that the failure to post a cost bond on appeal is grounds for automatic dismissal. All cases found uniformly hold that an order must first be made for posting of added cost bond on appeal and then time given for compliance, usually 10 days. If not complied with then

on motion duly noticed and with hearing had the Appellate Court can dismiss the appeal for FAILURE TO COMPLY WITH THE ORDER but not for failure to post bond under the rule.

In fact the very cases cited by the Appellees make this crystal clear.

MacNeil Bros Co v Felix Forte et al
253 F 2d 501

at F 501: "we dismissed the appeals.... upon failure of this same appellant to file a bond..... after we had ordered the same to be filed"

Indeed reading of the cases cited there were many violations of rules on appeal as a factor in those dismissals.

This appellant had complied with all the rules and indeed his record complete and his Brief on file when the dismissal took place.

CONCLUSION:

The Brief in Opposition clearly shows that the Appellees have no defenses to this Petition and no merit to their position. The Petition should be summarily granted and the cases remanded for further proceedings consistent with the FEDERAL RULES OF APPELLATE PROCEDURE and with the rulings and orders of this Honorable Court.

Respectfully Submitted:

By_____
STANLEY V. TUCKER

AFFIDAVIT OF SERVICE BY MAIL

State of Connecticut)
County of Hartford) ss

I, STANLEY V. TUCKER, DO HEREBY STATE that on the 18th of November 1974 I served three copies of the within Petitioner's Reply Brief on the Appellees by mailing postage prepaid first class by depositing in the U S mails at Hartford, Conn addressed as follows:

Richard Cosgrove, Esq.
550 Main St
Hartford, Conn06003

David Della-Bitta Esq
30 Trinity Place
Hartford, Conn 06115

Edward Cowles
686 Park St
Hartford, Conn 06103

David T. Wiggins
79 Elm St
Hartford, Conn 06115

James P. Herlihy
550 Main St
Hartford, Conn 06103

Richard Woodhall
79 Elm St
Hartford, Conn 06115

James P. Gory
550 Main Street
Hartford, Conn 06101

Dated: Nov 18th, 1974

By Stanley V. Tucker
STANLEY V. TUCKER

Sworn to and subscribed
to before me Nov. 18, 1974

Notary Public William Storey
My commission expires MY COMMISSION EXPIRES MARCH 31, 19

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SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
NOV 26 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court

Of The United States

OCTOBER TERM, 1974

74-266

STANLEY V. TUCKER

Petitioner

vs.

DAVID T. WIGGINS, ET AL.

Respondents

ON PETITION FOR
WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT
BRIEF FOR RESPONDENTS IN OPPOSITION

Alexander A. Goldfarb
Corporation Counsel
Richard M. Cosgrove, Esq.
Deputy Corporation Counsel
Counsel for Respondents
James P. Herlihy, Edward
Cowles and James P. Gorry
550 Main Street
Hartford ,Connecticut 06103

Robert K. Killian
Attorney General
David J. Della-Bitta, Esq.
Assistant Attorney-General
Counsel for Respondents
David T. Wiggins and
Richard Woodhall
30 Trinity Street
Hartford, Connecticut 06115

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Citations: .....

1. Cases:

a. *Central Manufacturing Co. v. B.M.K. Corporation*, 160 Fed. Supp. 318. 9

b. *Hagan v. Whitman* (CCA 9th, 1966) 356 F.2d 742 10

c. *MacNeil Bros. v. Forte* (CCA 1st, 1958) 253 F.2d 500. 10

d. *St. Marie v. U.S.* (CCA 9th, 1940) 108 F. 2d 876, Cert. denied 311 U.S. 652. 11

2. Miscellaneous:

a. Rule 2(c) Local Rules of Procedure for United States District Court, District of Connecticut. 11a

b. Rule 7, Local Rules of Procedure for United States District Court, District of Connecticut. 9

c. Rule 7, Federal Rules of Appellate Procedure. 9

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1974

74-266

STANLEY V. TUCKER

Petitioner

v.

DAVID T. WIGGINS, ET AL.

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Prior Action

There has been no prior action by the Court in this matter.

Opinions Below

The decision delivered in the Court below is not as yet officially reported, but is appended to the Petition for a Writ of Certiorari. The Motion to Dismiss of the Respondents was granted on January 15, 1974, the Motion to Re-Open the Judgment of Dismissal was denied on July 29, 1974.

Jurisdiction

The Respondents do not question the jurisdiction as set forth in the petition.

QUESTIONS PRESENTED

Petitioner's Brief mistakes the nature of the questions to be reviewed. The issues are

1. Was notice mailed to the petitioner at the address on file with the Clerk of the District Court, which address had not been changed by the Petitioner, proper notice?

2. Where the Petitioner was required by order of the District Court to file a $250 cost bond for each Respondent, but thereafter Petitioner filed only a single $250 cost bond and filed no appeal bond, had the Petitioner complied with the requirements of Rule 7 of the Federal Rules of Appellate Procedure?

3. Where Petitioner filed no appeal bond, was Petitioner entitled to file a purported increase in bond after judgment of dismissal was entered by the Circuit Court?

4. Was Respondents' Motion to Dismiss properly granted when it alleged Petitioner failed to file bond for costs as required by Rule 7 of the Federal Rules of Appellate Procedure?

5. Did Respondents "waive" their right to file a motion for dismissal of the Petitioner's Appeal where such motion was filed one week after the receipt of the record which showed no appeal bond to have been filed and before the Petitioner mailed his Brief on January 8, 1974?

STATEMENT

The Petitioner has made a "Statement of Factual Background" a part of his petition for certiorari. This statement contains nothing which has ever been introduced in evidence before a court and its contents have no bearing on the questions presented in the petition for certiorari.

The facts as shown by the record are as follows:

1. The Petitioner's action was dismissed in the District Court for failure to state a claim upon which relief can be granted with costs to the defendants on October 16, 1973.

2. Prior to the dismissal and upon separate application by each of the Respondents, David T. Wiggins, Individually, David T. Wiggins, in his capacity as Director of State Department of Health for the State of Connecticut, Richard Woodhall, individually, Richard Woodhall, in his capacity as Assistant to the Director of the State Health Department, James P. Herlihy, individually, James P. Herlihy, as Senior Public Health Sanitarian for the City of Hartford, James P. Gorry, individually, James P. Gorry, as Chief Plumbing Inspector for the City of Hartford, Edward Cowles, individually, and Edward Cowles, as Housing Inspector for the City of Hartford, the Petitioner was ordered to file a $250.00 bond as security for costs.

3. Instead of ten $250.00 bonds as required by the foregoing orders, the Petitioner filed one $250.00 bond with the Clerk of the District Court for the District of Connecticut.

4. The address of the Petitioner on file with the Clerk of the District Court was 963 Capitol Avenue, Hartford, Connecticut.

5. No change of address was ever filed with the Clerk of the District Court.

6. On October 30, 1973, the Petitioner filed a Notice of Appeal to the Second Circuit Court of Appeals dated October 27, 1973.

7. On November 27, 1973, the Petitioner filed a Designation of Record and Statement of Issues.

8. On December 7, 1973, the Record On Appeal and Index To Record On Appeal was forwarded to A. Daniel Fusari, Esq., Clerk, United States Court of Appeals for the Second Circuit.

9. On said Record On Appeal, Stanley V. Tucker, pro se, 963 Capitol Avenue, Hartford, Connecticut, 06106, was shown as Attorney for the Plaintiff.

10. No appeal bond was shown on the Record On Appeal.

11. On December 14, 1973, the Respondents filed a Motion to Dismiss on the grounds that the appellant failed to file a bond for costs as required by Rule 7, Federal Rules of Appellate Procedure and a copy of this Motion was mailed postage prepaid to Stanley V. Tucker, 963 Capitol Avenue, Hartford, Connecticut, 06106.

12. On January 15, 1974, the Respondents' Motion to Dismiss was granted by the United States Court of Appeals for the Second Circuit.

13. On January 25, 1974, the Petitioner filed a Motion to Re-Open Judgment of Dismissal in the United States Court of Appeals for the Second Circuit.

14. On May 6, 1974, the Petitioner filed with the United States Court of Appeals for the Second Circuit, an "Application for Appellant's Voluntary Increase of Cost Bond On Appeal To Five Hundred Dollars and To Vacate The Order of Dismissal."

15. On July 29, 1974, the United States Court of Appeals for the Second Circuit denied the Petitioner's motion for Reinstatement of the Appeal.

ARGUMENT

I. A costs bond filed in the District Court does not meet the requirements of an appeal bond required under Rule 7 of the Federal Rules of Appellate Procedure.

On June 23, 1973, the Petitioner filed a cost bond with the Clerk of the United States District Court for the District of Connecticut. The Petitioner had been ordered to post a $250.00 bond for each defendant or bonds totaling $2,500.00. This the Petitioner did not do. Under Local Rule 7, each defendant is entitled to request a bond for costs in the amount of $250.00 and this bond has no bearing on a subsequent bond in the amount of $250.00 required under the provisions of Rule 7 of the Federal Rules of Appellate Procedure. The defendants would be within their rights in seeking execution against the bond filed by the Petitioner for costs in the District Court.

> "The costs of the trial court, upon judgment rendered, follow that judgment or are merged in it. In the absence of a supersedeas bond (under 73 (d)), the prevailing party below may issue execution against the defendant on his judgment and collect both judgment and costs. Even though the judgment be six cents and the costs substantial, they both may be collected by execution. Indeed, I assume if the judgment be merely for costs, such costs may be collected by execution."
>
> *Central Manufacturing Co. v. B.M.K.Corporation*, 160 Fed. Supp. 318, 321.

Under the provisions of Rule 7 (F.R.A.P.) only the costs of appeal are subject to the appeal bond, not district court costs, unless a supersedeas bond was filed. Rule 7 (F.R.A.P.) specifically sets out what the appeal bond shall contain. The cash bond filed by the Petitioner contained none of these requirements.

II. Notice mailed to Petitioner's address on file with the Clerk of the District Court constitutes good notice of Motion to Dismiss.

The Petitioner claims that he received no notice of the Respondent's Motion for Dismissal, although it was mailed to his address on file with the Clerk of the District Court. It should be pointed out that the Brief that Petitioner relies on to show that his address was different than that on file with the District Court Clerk, was filed in January, 1974, after the Motion to Dismiss was filed and he has offered nothing to show that he requested his mailing address to be changed. Local Rule 2 (c).

III. The Circuit Court may dismiss an appeal for failure to file an appeal bond.

The dismissal of an appeal where a bond or appeal has not been filed is a matter of discretion with the Court. See *Hagan v. Whitman*, 356 F.2d 742 (1966) CCA(9), *MacNeil Bros. v. Forte*, (CCA 1st, 1958) 253 F2d 500.

The Court of Appeals for the Second Circuit not only reviewed this matter on the original motion to dismiss, but reviewed it a second time on the Petitioners motion to reopen the judgment of dismissal.

In conclusion, it might be pointed out that in the case of *St. Marie v. U.S.* (9th CA) 1940, 108 F2d 876, Cert. denied 311 U.S. 652, the Court did not state that failure to file a cost bond is not ground for dismissal of appeal where no specific relief is asked on this score and where there is no showing of disadvantage to the appellees. On the contrary, the court in its opening specifically stated it was not considering this question because it had not been raised.

The Petitioner failed to follow the rules in both the District Court and the Circuit Court of Appeals. He has been denied none of his rights.

CONCLUSION

For the reasons stated above, Respondents say that a Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Respondents

David J. Della-Bitta, Esq.
Assistant Attorney-General
Counsel for Respondents,
David T. Wiggins and
Richard Woodhall.

Richard M. Cosgrove, Esq.
Deputy Corporation Counsel
Counsel for Respondents
James P. Herlihy, Edward
Cowles and James P. Gorry.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
OFFICE OF THE CLERK
FEDERAL BUILDING
NEW HAVEN 06508

SYLVESTER A. MARKOWSKI
CLERK

FRANCES J. CONSIGLIO
DEPUTY-IN-CHARGE
NEW HAVEN

December 7, 1973

A. Daniel Fusaro, Esq.
Clerk, United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, New York

RE: Stanley V. Tucker vs. David T. Wiggins, et als
CIVIL NO. 15,574

Dear Mr. Fusaro:

Enclosed is the Record on Appeal in the above-entitled case, along with two copies of the Index for receipting purposes.

Very truly yours,

SYLVESTER A. MARKOWSKI
CLERK

BY_____
Deputy in Charge

M/C/m
Enclos.
cc: Mr. Stanley V. Tucker,
Robert K. Killian, Esq.
F. Michael Ahern, Esq.
David J. Della-Bitta, Esq.
Richard M. Cosgrove, Esq.
Mr. David C. Wiggins
Mr. Richard S. Woodhull
Mr. Edward Cowles
Mr. James P. Herlihy
Mr. James J. Gorry

CIVIL DOCKET

UNITED STATES DISTRICT COURT

15574

Ma Joseph Blumenfeld

Jury demand date: Jan. 26, 1973 by Plaintiff

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
STANLEY V. TUCKER vs. DAVID T. WIGGINS, Individually and in his capacity as Director State Health Department for the State of Connecticut; RICHARD WOODHALL, Individually and in his capacity as Assistant to the Director of the State Health Department for the State of Conn.; JAMES P. HERLIHY, Individually and in his capacity as Senior Public Health Sanitarian for the City of Hartford; EDWARD COWLES, Individually and in his capacity as Housing Inspector for the City of Hartford; JAMES P. GORRY, Individually and in his capacity as Chief Plumbing Inspector for the City of Hartford	For plaintiff: Stanley V. Tucker, pro se 963 Capitol Avenue Hartford, Conn. 06106 For defendant: Robert K. Killian (For: David T. F. Michael Ahern Wiggins & Richard David J. Della-Ritta Woodhall) 30 Trinity Street Hartford, Conn. 06115 Richard M. Cosgrove (For: Herlihy, Cowles & Gorry) Deputy Corporation Counsel 550 Main Street Hartford, Conn. 06103
FOR DEFENDANTS: (Cont'd) Richard S. Woodhull, Pro se - Individual Assistant Director State Health Dept. 79 Elm Street Hartford, Conn. Edward Cowles, Pro se - Individual James P. Herlihy, Pro Se - Individual James J. Gorry, Pro se - Individual	David C. Wiggins, pro se - individual Director, State Health Dept. 79 Elm Street Hartford Conn.

STATISTICAL RECORD	COSTS		DATE 1973	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk		1/29	Stanley V. Tucker	15 00	
J.S. 6 mailed	Marshal		1/31	Deposit: G.F.100869		15 00
Basis of Action: Declaratory Judgment action brought pursuant to 42 USC §§ 1983 and 1985(3), seeking	Docket fee		10/30	Stanley Tucker (Appeal)	5 00	
	Witness fees		10/31	Deposit: G.F.100869		5 00
Action arose out of damages for alleged violation of Constitutional rights by defendants in enforcing various State Statutes concerning property owned by Plaintiff. $220,000. Also see 3-Judge District Court.	Depositions					

15574

DATE 1973	PROCEEDINGS	Date Order or Judgment Note
1/26	Complaint, Jury Trial Demand and Petition for Three Judge Court, filed at Hartford. Summons issued and together with copies of same and of complaint, jury demand and Petition, handed to the Marshal at Hartford for service.	
2/13	Marshal's Return Showing Service, filed.-Summons & Complaint.	
"	Brief in Support of Application for Three-Judge Court, filed by plaintiff at Hartford.	
2/13	Application to Convene a Three-Judge District Court "Over to Feb. 20th". Blumenfeld, J. M-2/14/73	
2/21	Appearance of Robert K. Killian, Atty. General and F. Michael Ahern and David J. Della-Bitta, Asst. Attys. Generals entered for defendants David T. Wiggins, Director of State Health Dept. and Richard Woodhall, Asst. to Director in their official capacities.	
2/23	Appearance of Richard M. Cosgrove, Deputy Corporation Counsel, entered for defendants James P. Herlihy, Edward Cowles and James P. Gory.	
2/26	Plaintiff's Application to Convene a Three-Judge District Court "Over two weeks". Blumenfeld, J. M-2/27/73	
"	Stipulation for Enlargement of Time, filed and granted. Blumenfeld, J. M-2/27/73 Time for defendants to file responsive pleading extended until March 21, 1973. Copies mailed to all counsel.	
3/12	Plaintiff's Application to Convene a Three-Judge District Court "Off". (Asst. Atty Gen. David J. Della-Bitta appeared and stated parties had agreed to enlargement of time). Blumenfeld, J. M-3/14/73	
3/22	Motion to Dismiss and Notice of Motion, filed at Hartford and given to Judge Blumenfeld.	
3/26	Hearing on Application to Convene a Three-Judge District Court. Decision Reserved. One week for defendant to file brief and one week for plaintiff to respond. Blumenfeld, J. M-3/27/73	
4/4	Motion for More Specific Statement, Notice of Hearing and Memorandum of Law, filed by Plaintiff.	
4/2	Amended Motion to Dismiss, filed by defendants at Hartford.	
"	Brief in Opposition to Application for Three-Judge Court filed by defendants at Hartford.	
4/9	Plaintiff's Motion for More Specific Statement "Off". Blumenfeld, J. M-4/10/73	
"	Application (Ex Parte) with Notice to Defendants for Enlargement of Time to Respond to Defendant's Brief in Opposition to Application for Three Judge Court, filed by Plaintiff.	
"	Motion to Sever, Notice of Motion and Supporting Brief, filed by Plaintiff.	
4/10	Plaintiff's Motion for More Specific Statement, endorsed as follows: "Off - defendant's brief sets out the grounds of dismissal." Blumenfeld, J. M-4/12/73. Copies mailed to all counsel, and to plaintiff.	
4/10	Letter dated April 9, 1973 from plaintiff to Judge Blumenfeld, re Brief in Support of Motion to Dismiss and Application for Three Judge Court, filed.	
3/28	Request for Entry of Default against defendants David T. Wiggins, Individually, James P. Herlihy, Individually, Edward Cowles, Individually and James P. Gory, Individually for failure to appear or plead, filed by Plaintiff pro se.	

(Cont'd.)

C. 110 Rev. Civil Docket Continuation STANLEY V. TUCKER v. DAVID T WIGGINS, Ind. and as Director State Health Department, et als

DATE 1973	PROCEEDINGS	Date Order or Judgment Noted
4/16	Default entered under Rule 55(a) as to defendants David T. Wiggins, James P. Herlihy, Edward Cowles and James P. Gory, all individually only. Markowski, C. M-4/16/73 Copies to Plaintiff and counsel.	
4/18	Appearance of Robert K. Killian, Atty. General, F. Michael Ahern and David J. Della-Bitta, Asst. Attys. General entered for defendants David T. Wiggins and Richard Woodhall.	
"	Appearance of Richard M. Cosgrove, Deputy Corporation Counsel entered for defendants James P. Herlihy, Edward Cowles and James P. Gory.	
"	Motion to Set Aside Default and Notice of Motion, filed by defendants David T. Wiggins and Richard Woodhall.	
4/30	Hearing on (1) Plaintiff's Motion to Sever; (2) Defendants' Motion to Set Aside Default. Decision Reserved on Both Motions. Blumenfeld, J. M-5/2/73.	
5/4	Order endorsed on Plaintiff's Motion to Sever, as follows: "In view of the pendency of the plaintiff;s motion to convene a three-judge district court, action on this motion to sever will be deferred until after disposition of that motion." Blumenfeld, J. M-5/7/73 Copies mailed from Hartford to Plaintiff, Asst. Atty Gen. Della-Bitta and to Corp. Counsel Cosgrove.	
"	Order endorsed on Defendants' Motion to Set Aside Default, as follows: "No prejudice having inured to the plaintiff, the defendants' motion to set aside the default is granted for good cause shown." Blumenfeld, J. M-5/7/73 Copies mailed from Hartford to Plaintiff, Asst. Atty Gen. and to Corp. Counsel.	
5/15	Motion of Attorney General and Asst. Attorney General to Withdraw appearance for defendants David T. Wiggins and Richard Woodhall in their individual capacities only, and Notice of Motion, filed.	
5/15	Appearance of David C. Wiggin entered pro se with respect to his individual capacity.	
"	Appearance of Richard S. Woodhull, entered pro se with respect to his individual capacity.	
5/17	Motion of Richard M. Cosgrove, Deputy Corporation Counsel, for Permission to Withdraw appearance for Defendants James P. Herlihy, Edward Cowles, and James P. Gorry, in their individual capacities only, and Notice of Motion, filed.	
5/17	Appearances (3) of James P. Herlihy, Edward Cowles and James J. Corry entered pro se with respect to their individual capacity.	
5/29	Hearing on (1) Motion of Atty. General Killian and Asst. Atty. General Ahern to Withdraw appearance for defendants David T. Wiggin and Richard Woodhall in their individual capacities only; (2) Motion of Richard M. Cosgrove to Withdraw his appearance for defendants Herlihy, Cowles and Corry, in their official capacities only. "Granted" Blumenfeld, J. Copies mailed to all counsel.	
5/14	Brief on Motion to Dismiss and in Opposition to Application for Three-Judge Court, filed by defendants David C. Wiggin and Richard S. Woodhull.	
"	Motion to Dismiss as to Pro Se Defendants, filed by David C. Wiggin and Richard S. Woodhull, individually.	
"	Request to Clerk for Security for Costs Pursuant to Local Rule 7, filed by defendant Richard S. Woodhull, individually.	
"	Request to Clerk for Security for Costs Pursuant to Local	

DATE 1973	PROCEEDINGS	Date Order or Judgment Noted
	Rule 7, filed by defendant David T. Wiggins, individually.	
6/14	Request that Plaintiff deposit cash bonds or bond with sufficient surety in the sum of $250.00 as security for costs, filed by Defendants David T. Wiggins, in his capacity as Director of the State Health Department for the State of Conn.; and Richard Woodhall, in his capacity as Assistant to the Director of the State Health Department for the State of Connecticut.	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/14/73. Copies mailed. (David T. Wiggins, in his capacity as Director of State Health Dept. for the State of Conn.)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/14/73. Copies mailed. (Richard Woodhall, in his capacity as assistant to the Director of the State Health Dept.)	
"	Order entered that plaintiff file a boud with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/14/73. Copies mailed. (Richard S. Woodhull, individually Richard Woodhall, individually)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/14/73. Copies mailed. (David C. Wiggin, individually David T. Wiggins, individually)	
6/15	Request that Plaintiff deposit cash bonds or bonds with sufficient surety in the sum of $250.00 as security for costs, filed by defendants James P. Kerlihy in his capacity as Senior Public Health Sanitarian for the City of Hartford; Edward Cowles in his capacity as Housing Inspector for the City of Hartford; and James J. Gorry in his capacity as Chief Plumbing Inspector for the City of Hartford.	
"	Request that Plaintiff deposit cash bond or bond with sufficient surety in the sum of $250.00 as security for costs, filed by defendant Edward Cowles, individually.	
"	Request that Plaintiff deposit cash bond or bond with sufficient surety in the sum of $250.00 as security for costs, filed by defendant James J. Gorry, individually.	
"	Request that Plaintiff deposit cash bond or bond with sufficient surety in the sum of $250.00 as security for costs, filed by defendant James P. Kerlihy, individually.	
6/18	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/18/73. Copies mailed. (Edward Coles, individually)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/18/73. Copies mailed. (Edward Coles, as Housing Inspector for the City of Hartford)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/18/73. Copies mailed. (James J. Gorry, individually)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/18/73. Copies mailed. (James P. Cory , as Chief Plumbing Inspector for the City of Hartford)	
"	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C.	

(continued)

D. C. 110 Rev. Civil Docket Continuation STANLEY V. TUCKER v. DAVID T. WIGGINS, ind. and as Director State Health Department et al

DATE 1973	PROCEEDINGS	Date Order or Judgment Noted
	M-6/18/73. Copies mailed. (James P. Herlihy, individually)	
6/18	Order entered that plaintiff file a bond with sufficient surety in the sum of $250.00 pursuant to Rule 6. Markowski, C. M-6/18/73. Copies mailed. (James P. Herlihy, as Senior Public Health Sanitarian for the City of Hartford)	
6/26	Cash Bond in the amount of $250.00 deposited into the Registry of the Court. (filed by Plaintiff)	
6/25	Plaintiff's Brief in Opposition to Motions to Dismiss on File and Plaintiff's Supplemental Brief in Support of Application for Three-Judge Court, filed at Hartford.	
6/27	Pro-Se Defendants' (David T. Wiggins and Richard Woodhall) Motion to Dismiss as to Pro-Se Defendants, endorsed as follows: "Off." Blumenfeld, J. M-6/27/73. Copies mailed.	
~~7/16~~	~~Motion for Extension of Time for filing of pleadings until September 15, 1973 and Notice of Motion, filed by defendant.~~	
9/10	Hearing on (1) Application for Three Judge Court; and (2) Defendants' Motion to Dismiss. Decision Reserved. Blumenfeld, J. M-9/13/73	
10/12	Ruling on Motion to Dismiss, entered. The motion to dismiss the complaint for failure to state a claim upon which relief can be granted (Rule 12(b)(6), F.R.C.P., is granted.(*) The entire complaint is hereby ordered dismissed. Blumenfeld, J. M-10/15/73 copies mailed. (*Plaintiff's application for a three-judge court denied and that portion of his complaint is dismissed)	
10/16	Judgment entered that this action is dismissed for failure to state a claim upon which relief can be granted, with costs to the defendants. Markowski, C. M-10/16/73 Copies mailed.	
10/30	Notice of Appeal, filed by Plaintiff. Copies mailed.	
11/27	Designation of Record and Statement of Issues, filed by plaintiff.	

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	
	:	
VS.	:	
	:	CIVIL NO. 15,574
DAVID T. WIGGINS,	:	
ET ALS	:	

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APPENDIX B

Rule 7.

BOND FOR COSTS ON APPEAL IN CIVIL CASES

Unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking which includes security for the payment of costs on appeal, in civil cases a bond for costs on appeal or equivalent security shall be filed by the appellant in the district court with the notice of appeal; but security shall not be required of an appellant who is not subject to costs. The bond or equivalent security shall be in the sum or value of $250 unless the district court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the court of appeals may direct if the judgment is modified. If a bond or equivalent security in the sum or value of $250 is given, no approval thereof is necessary. After a bond for costs on appeal is filed, an appellee may raise for determination by the clerk of the district court objections to the form of the bond or to the sufficiency of the surety. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

APPENDIX C

Rule 2

(c) *Local Office.* No member of the bar of this court who does not have an office for the transaction of business in person within the District of Connecticut and no visiting lawyer admitted specially under Rule 2(e) not having an office for the transaction of business in person within the District of Connecticut shall appear as attorney or proctor of record in any cause without specifying on the record a member of the bar of this court having an office within the District of Connecticut, upon whom service of all papers shall be made.

Any party appearing *pro se* must (1) give the address within the District of Connecticut where service can be made in the same manner as service is made on an attorney or (2) designate in writing the clerk of the court to receive service and give the clerk an address where service can be forwarded.

APPENDIX D

Rule 7

SECURITY FOR COSTS; BOND ON REMOVAL

(a) *Costs.* At any time after the commencement of an action, each defendant is entitled on request to the clerk to an order to be entered by the clerk, as of course, for a deposit or bond with sufficient surety in the sum of $250.00 to be given within thirty days from the entry of such order. Additional or other security or justification of financial responsibility by any surety may be ordered by the court at any time during the pendency of the action for good cause shown on motion duly noticed.